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LABOUR & E.S.I. DEPARTMENT

NOTIFICATION

The 26th December 2014

No. 10538—IR(ID)-45/2011-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 2nd December 2014 in Industrial Dispute Case No. 05/2011 of the Presiding Officer, Labour Court, Jeypore, Dist. Koraput to whom the industrial dispute between the Management of Honorary Secretary, Red Cross School for the Blind & District Social Welfare Officer, Ganjam Collectorate, Chhatrapur and their workman Smt. Kamal Kumari Panda was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE COURT OF THE PRESIDING OFFICER, LABOUR COURT, JEYPORE, KORAPUT

INDUSTRIAL DISPUTE CASE No. 5 OF 2011

Dated the 2nd December 2014

Present :

Shri Debasis Rout, O.S.J.S. (Jr. Branch),
Presiding Officer, Labour Court, Jeypore
Dist Koraput.

Between :

The Honorary Secretary,
Red Cross School for the Blind and
District Social Welfare Officer,
Ganjam Collectorate, Chhatrapur
At/P.O. Chhatrapur, Dist. Ganjam

.. First Party—Management

And

Its Workman
Smt. Kamal Kumari Panda
W/o Shri Bijay Kumar Panda
At Lanjipali Jail Road, P.O. Lanjipali, Berhampur
Dist. Ganjam.

.. Second Party—Workman

Under Sections 10 & 12 of the Industrial Disputes Act, 1947

Appearances :

Shri K.C. Mishra, Advocate, Berhampur	. .	For the First Party —Management
Shri B.V. Ramana, A/R of the Workman at Jeypore.(K)	. .	For the Second Party—Workman
Date of Argument	. .	22-11-2014
Date of Award	. .	02-12-2014

AWARD

The matter arises out of a reference made by the State Government in their Labour & Employment Department, Odisha, Bhubaneswar under Section 12 (5), read with Section 10(1) of the Industrial Disputes Act, 1947 vide Memo No. 7582(5)-LE., date the 19th August 2011 for adjudication of the dispute scheduled below :

SCHEDULE

"Whether the action of the Management of Red Cross School for the Blind, Berhampur, Ganjam in refusing employment to Smt. Kamal Kumari Panda, ex-Messenger-*cum*-Book Binder of Braille Press with effect from the 1st Septemebr 2006 is legal and/or justified ? If not, to what relief Smt. Panda is entitled ?"

2. Briefly stated the case of the second party workman as per the statement of claim is that, she was engaged as Messenger in the Breille Press under the 1st party Management of Red Cross School for Blind at Berhampur, with effect from the 19th September 1997 and she was continued in the same post and drawing salary up to 31st August 2006 but she was removed from service on the 25th August 2006 after that she was not allowed to continue her Job. She was not allowed to sign in the Attendance Register and the Management wanted to deprive her from the service, the post is sanctioned post in the Scale of Pay of Rs. 1,605 per month but she was being paid Rs. 700 to Rs. 900 per month. She was approached to the different authorities for several times for redressal of her grievances but no steps had been taken. The management illegally terminated her service with effect from the 25th August 2006 without giving any opportunity to her by violating the provisions of natural justice. Therefore she has claimed her reinstatement with full back wages.

3. The case of the 1st party management as give out in the written statement filed by him is that, the workman was engaged by the management as a Messenger in the Braille Press established by the Red Cross School for Blind on purely *ad hoc* basis for a period of 89 days and her engagement was subsequently renewed for 89 days up to 16th September 1999 but not renewed further. Due to financial constraints and for her own negligence in duty and bad performance, the 1st party

management decided to terminate her service in April 2006 under the order of the Managing Committee vide Resolution dated the 19th April 2006 which was orally communicated to her in 30th June 2006. The 1st party further pleaded that, the Red Cross School is a Philanthropic Organisation set up for the sole purpose providing service to the poor Blind and Orphan Children and the staff in this Organisation work as Volunteers and the Braille Press is an ancillary to the said School. Her services in the Braille Press was purely temporary and on *ad hoc* basis and she is not entitled to anything. For the above reasons, it has been prayed by the 1st party to rejected the relief claimed by the workman.

4. On the aforesaid pleading of the parties, the following issues are framed for determination:—

ISSUES

- (i) “Whether the action of the Management of Red Cross School for the Blind, Berhampur, Ganjam in refusing employment to Smt. Kamal Kumari Panda ex-Messenger-*cum*-Book Binder of Braille Press with effect from the 1st September 2006 is legal and/or justified ?
- (ii) If not, to what relief Smt. Panda is entitled ?”

5. In Order to prove its case, the second party workman examined herself as W.W. No. 1 and has relied on 3 documents marked as Exts. 1 to 3. On the other hand the 1st party management examined one witness as M.W. No. 1 and has relied on 6 documents marked as Exts. A to F in support of its case.

FINDINGS

6. *Issue Nos. I & II*—Both the issues are taken of together for the sake of convenience. The workman examined as W.W. No. 1 has stated in her evidence that, she was appointed as Messenger for the Braille Press of the Red Cross School for Blind at Berhampur as per office order No. 77/1997-98, dated the 19th September 1997 vide Ext. 1 showing that, she was appointed by the Honorary Secretary of the Red Cross School for Blind and her appointed is purely temporary and on *ad hoc* basis for a period of 89 days. She further stated that, she was getting consolidated salary of Rs. 900 per month and she was allowed to continue in service up to 31st August 2006. She further stated that, the Red Cross School for Blind is an undertaking of the Government of Odisha. The Government of Odisha used to sanction the yearly salary of Rs. 19,260 for the post of Sweeper-*cum*-Messenger vide Memo No. 3758, dated the 20th February 2003 and as such the Government sanctioned the monthly salary of Rs. 1,650 for the said post but the 1st party management was paying Rs. 900 per month. The workman also produced the copy of Memo No. 3758, dated the 20th February 2003 vide Ext. 2. It is also her evidence that, she was retrenched from her service by the verbal order of the management. The evidence of the workman further discloses that, the Additional District Magistrate of Ganjam had conducted an enquiry and submitted the enquiry report on the representation of the workman vide Ext. 3.

7. The M.W No. 1 being the Manager, Braille Press in Red Cross School for the Blind, he has deposed that, the Red Cross School for Blind is a Philanthropic Charitable Organisation working for Education, Rehabilitation and welfare of the Blind Children and Braille Press is a Branch of the said School. He further stated that, the activities of the said School are not undertaking for any Commercial Purpose or Profit making motive. The evidence of M.W. No. 1 further discloses that, the appointment of the workman was purely temporary on *ad hoc* basis for a period of 89 days and

the *ad hoc* engagement for 89 days was given to the workman in order dated the 30th June 1998, 21st September 1998 and 23rd December 1998 and no further order was issued after the 16th May 1999 for the misconduct, insubordination of the workman. The 1st party also produced the copy of L. No. 99/WCD of 2006 Bhubaneswar, dated the 20th March 2006 (Ext. A). Copy of the office order No. 77/1997-98, dated the 19th September 1997 (Ext. B), and another Office Order No. 123/98-99, dated the 23rd December 1998 (Ext. C), and copy of the extract of Proceeding of the Meeting of the Managing Committee, dated the 19th April 2006 (Ext. D). The M.W. No. 1 further stated that, since the post of the second party was found to be redundant, the 1st party did not feel it necessary for further continuation of the post. He further stated that, the 2nd party has already received her dues and nothing is pending to be paid by the 1st party management. The claim of the second party workman is not within the purview of the I.D. Act. In support of its case, the second party produced copy of L. No. 769/LP, dated the 22nd February 2011 in case No. 134-LP(A) 2010 marked as Ext. E and copy of the L.No. 118/WCD, dated the 3rd January 2012 marked as Ext. F). In his cross examination he has admitted that, the workman was paid the wages from the date of appointment till the 31st August 2006 and the workman was terminated from service without giving 15 days or one month notice and compensation rather she was terminated on verbal order.

It is also admitted by M.W. No. 1 in his cross examination that, as per sanction of the Government the salary for the post of Sweeper-cum-Messenger is at the rate of Rs. 1,605 per month but she was paid Rs. 900 per month as a *ad hoc* Messenger.

8. It transpires from the evidence as noted above that, the workman was provisionally appointed on *ad hoc* basis as Messenger in the Braille Press Red Cross School for the Blind at a consolidated salary of Rs. 900 as per office order dated the 19th September 1997 of the Honorary Secretary and the appointment was purely temporary for the period of 89 days and she was allowed to continue in service up to the 31st August 2006 by receiving the salary for the said period. The 1st party management terminated the second party workman from her service on verbal Order, as the post is found to be redundant. Therefore the question arises for consideration is as to whether the workman is entitled to get the relief as prayed for.

9. The learned A/R of the workman contended that, after due selection the workman was appointed as the Messenger of Braille Press on temporary basis for a period of 89 days and before completion of 89 days, the service of the workman was extended from time to time and she was allowed to continue in service without interruption of service up to the 31st August 2006. He further contended that the workman was entrusted to do all sorts of works diligently without any hesitation. He further contended that, the Government sanctioned the monthly salary for Sweeper-cum-Messenger post Rs. 1,605 but she was being paid Rs. 900 per month. On the other hand the Honorary Secretary and DSWO, Ganjam did not issue any notice for retrenching the workman from service referring the resolution of the Managing Committee. It is also contended that, the retrenching the workman from service by the verbal order of the 1st party Management is illegal and unsustainable as per Section 25 of the I.D. Act. In support of its contention he relied on decisions, i.e. State of Odisha *Vrs.* Shri Sudhakar Rout and another, 2006 (Supp-II) OLR-709, State of Odisha and Others, *Vrs.* Shri Trinath Jena and others 2007 (Supp-I) OLR-700, The Management of M/s Bhubaneswar Electrical Division (GRIDCO) *Vrs.* The General Secretary, O.S.E.B. Sramik Mahasangha and another 2008 (Supp-I) OLR-637, The Management of Capital Urban House Building Co-operative Society Ltd. *Vrs.* Government of Odisha and others 2009 (Supp-I) OLR-660.

10. On the other hand the learned counsel for the 1st party management submitted that the Red Cross School for the Blind is a Philanthropic Charitable Organisation working for education, rehabilitation and welfare of the Blind Children and the said School has no such activity with motive to make any gain or profit and hence it is not an 'Industry' as per Section 2(J) of the I.D. Act. He further submitted that, the workman was appointed as Temporary and on *ad hoc* basis for the period of 89 days and may be terminated at any time without assigning any reason thereof. Accordingly the workman was disengaged from the service but she was not retrenched from service by the 1st party management and as such she is not entitled for any dues from the management. He further submitted that, the establishment of the 1st party is not an Industry and as such the second party is not a workman as per provision of Section 2 (s) of the I.D. Act. Hence the claim of the second party workman is not within the purview of the Industrial Dispute Act. So the action taken by the 1st party is legal and justified. He also relied on decisions (1) Physical Research Laboratory *Vrs.* K.G. Sharma, (2) Birla Vxl. Ltd. *Vrs* State of Punjab and Ors., (3) Indian Drugs & Pharmaceuticals *Vrs.* workman Indian Drugs & Pharmaceutical Ltd., (4) District Animal Husbandry Officer, Bundi *Vs.* Judge, Labour Court, Kota (5) Koodaranji Service Co-operative Bank *Vs.* M.M. Lissy and Ors., (6) Ramen Baruah *Vs.* Presiding Officer, Labour Court and (7) D.M., O.F.D.C. Ltd., Boudh (C.K.L) Division *Vs.* Smt. Apasari Bhoi, 2014 (I) OLR-756.

11. As it appears that, the second party workman was working as Messenger in the Braille Press Project Red Cross School for Blind on *ad hoc* basis basing on the office order dated the 19th September 1997 issued by the Honorary Secretary of the Red Cross School for the Blind and she could avail opportunity of attending the press up to the 25th August 2006 and received her remuneration up to the 31st June 2006. As already stated the workman challenged the termination of her service by the 1st party management on the ground that, no notice was issued, no retrenchment compensation was paid, and no proceeding was drawn up. According to 1st party management, no further engagement order was issued to the workman due to negligence in duty and bad performance and since the post of Messenger was found to be redundant. The 1st party management has taken a specific plea that, the Red Cross School for the Blind is a Philanthropic Charitable Organisation which is not an Industry and the second party workman can not be treated as a workman. It is evident that, the workman was working in the Braille Press Project, the Red Cross School for Blind and the activities of the Red Cross School for Blind comprises education to the Blind Children up to Secondary level, production and distribution of Braille text Books. Thus it can be said that, in the said press, the activity carried on by co-operation between an employee and the workman for production and distribution of Braille Text Books, to the Blind Children, so it can be said that, the said press is a Industrial Establishment. On the other hand, no evidence has laid by the 1st party to show that, the Braille Press is an ancillary to the School for the Blind which has no independent entity. It may be noted that, the said press is run with the help of a Manager and two operational staff and to help them and assist in book binding and other unskilled works an *ad hoc* messenger being taken, as such activity of the said press carried on by co-operation between the parties. To reiterate the second party workman was working under the 1st party management on *ad hoc* basis for a period of 89 days. As noted above, the 1st party management contended that the second party workman is not a workman as her appointment is purely temporary and *ad hoc* basis. In this context, the law is well settled that, the source of employment, the method of recruitment, the terms and conditions of employment/contract of service, the quantum of wages/ Pay and the mode of payment are not at all relevant for deciding whether or not a person is a

workman within the meaning of Section 2(s) of the I.D. Act. The definition of workman also does not make any distinction between full time and part time employee or a person appointed on contract basis. Even though the workman was appointed on *ad hoc* basis at consolidated salary of Rs. 900 per month, basing on condition of her service and quantum of salary it can not be said that, the second party is not a workman under the establishment of the 1st party management.

12. The second party workman was appointed as Messenger in the Braille Press, the Red Cross School for Blind as per office order No. 77/1997-98, dated the 19th September 1997. As per the said order her engagement was renewed by passing the orders time to time for 89 days period by the management and she has received the salary up to the 31st August 2006. As already stated the workman challenged the order of disengagement of the 1st party management. Therefore, the question arises for consideration is as to whether the 1st party disengaged the second party workman from the service in due process of law. The workman contended that, she was retrenched from service with effect from the 31st August 2006 by the verbal orders of the 1st party management whereas one month notice was not issued, no retrenchment compensation was paid and no proceeding was drawn up. On the contrary, the management contended that her engagement was renewed up to the 16th September 1999 but not renewed further and with due compassion she could avail the opportunity of attending the press up to the 25th August 2006 and received salary up to the 31st August 2006. The management further contended that, due to financial constraints, for her own negligence in duty and bad performance, the 1st party management decided to terminate her service in April 2006 under the order of the Managing Committee vide Resolution dated the 19th April 2006 which was orally communicated to her in the 30th June 2006. It transpires from the contention as noted above that, the workman was terminated from service due to financial constraints, negligence in duty and bad performance as per resolution of the Managing Committee dated the 19th April 2006 which was orally communicated to her in the 30th June 2006 but she was attending the press up to the 25th August 2006 and received her remuneration up to 31st August 2006. It would reveal from the Office Order No. 77/1997-98 dated the 19th September 1997 issued by the Honorary Secretary of the Red Cross School for Blind vide Ext. 1 & B that, the appointment is purely temporary on *ad hoc* basis for a period of 89 days may be terminated at any time without assigning any reason thereof what so ever giving a notice of 15 days on either side. In the present case, the 1st Party management terminated the service of the second party on verbal order without giving the notice, However the termination order was passed on the basis of the resolution dated the 19th April 2006 by the Managing Committee due to financial constraints but the workman was working under the management up to 25th August 2006 and received her remuneration up to the 31st August 2006. According to 1st party management her engagement was renewed upto the 16th September 1999 but not renewed further but the 1st party management has not submitted any documents to show that, the engagement of the workman was renewed from time to time up to the 16th September 1999, rather the second party workman was allowed to work in the said press up to the 25th August 2006 and received her salary up to the 31st August 2006. Therefore, it can be held that, the workman was continuing her service from the 19th September 1997 till the 31st August 2006. It is to be further noticed that, the termination order was passed due to negligence in duty and bad performance of the workman. During course of hearing, the 1st party management has not adduced any evidence to prove that, the workman was not discharging her duty properly. Moreover the notice has not been served on the workman before her termination and the decision of the Managing Committee regarding her termination has not been communicated to the workman. Rather the said decision was orally communicated in the 30th June 2006 by the 1st party

management on the other hand workman was working under the management up to 31st August 2006. In the light of above discussion it is very much clear that, the 1st party terminated her from the service without due procedure.

13. The second party workman contended that, she was getting remuneration of Rs. 900 per month instead of Rs. 1,605 per month as sanctioned by the Government. She has claimed differential amount from January 2004 till the 31st August 2006. On the other hand the 1st party contended that, she has already received her dues and nothing is pending to be paid by the 1st party and the said post is found to be redundant. In the present case the appointment of the workman is purely temporary and *ad hoc* basis and she was getting consolidated salary from the management. The services of the workman was not engaged against a vacancy of the said post and without following the procedure for selection, rather she was appointed on temporary and *ad hoc* basis. Therefore, she is not entitled to received amount sanction by the Government for the post of Sweeper-*cum*-Messenger as initially she was appointed as Messenger on temporary basis. Thus the appointment of the workman is purely temporary on *ad hoc* basis and she was not engaged against the post of vacancy. Therefore, the workman is not entitled to reinstate in service.

14. Having regard to the facts and circumstances of the case, it appears that, the service of the workman was terminated as she was appointed on temporary and *ad hoc* basis, but the management disengaged the workman without following the principles of natural justice. On the other hand the workman was not appointed against the permanent post nor she was a regular employee in the establishment of the first party management. Considering the manner of appointment and the mode of payment of salary, I am of the opinion that, granting of compensation instead of ordering for reinstatement with full back wages can not be said to be unreasonable in this case. This it will meet the ends of justice, it is ordered for payment of compensation in lieu of reinstatement with full back wages.

15. In the result the reference is answered on contest against the first party management without cost and accordingly the action of the management of Red Cross School for the Blind, Berhampur in refusing employment to the workman with effect from the 1st September 2006 is illegal and unjustified. In view of the above, the second party workman be awarded the compensation of Rs. 10,000 (Rupees ten thousand) only.

Dictated and corrected by me.

DEBASIS ROUT
2-12-2014
Presiding Officer
Labour Court, Jeypore

DEBASIS ROUT
2-12-2014
Presiding Officer
Labour Court, Jeypore

By order of the Governor
M. NAYAK

Under-Secretary to Government

Confirmed
MAHESWAR MOHANTY
Speaker
Odisha Legislative Assembly

Confirmed
MAHESWAR MOHANTY
Speaker
Odisha Legislative Assembly

Confirmed
MAHESWAR MOHANTY
Speaker
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Confirmed
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